IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

(1)Ram Ratan Chouhan vs. State of Rajasthan
(S.B.C.Writ Petition No.4988/02)
(2)Heer Singh Tanwar vs. State of Rajasthan
(S.B.C.Writ Petition No.4803/02)
(3)Bhoj Raj Vyas vs. State of Rajasthan
(S.B.C.Writ Petition No.2058/02)
(4)Madan Lal Modi vs. State of Rajasthan
(S.B.C.Writ Petition No.5001/02)
(5)Roop Narayan Joshi vs. State of Rajasthan
(S.B.C.Writ Petition No.3432/02)
(6)Smt.Pushpa Kela vs. State of Rajasthan
(S.B.C.Writ Petition No.4274/02)

Date of Order :- 20th November, 2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. M.S.Singhvi, Advocate for the petitioners.
Mr. Rameshwar Dave, Dy.Government for the State.

BY THE COURT:-

REPORTABLE

All the aforementioned writ petitions have been filed by the petitioners against a common order dated 7th May, 2002. The petitioners were by this order fixed in the pay scale

of Rs.7500-12000 w.e.f. 1st July, 1998 subject to the condition that they would be required to refund the excess amount received by them pursuant to payment of their salary in the earlier pay scale. The petitioners have also challenged the notification dated 7th August, 1998 prescribing thereby pay scale No.12-A i.e. 7500-12000 for the post of Vice Principal held by them and have prayed that the same be declared illegal and struck down as being violative of Articles of 14 and 16 of the Constitution of India. The petitioners have prayed for a further direction that the respondents be restrained from making any recovery from them pursuant to their order dated 7th May, 2002 and 17.6.2002 and if any recovery is made in the meantime, they may be further directed refund such amount @ 12% p.a. Since all these writ petitions raise a common question of facts and law, they are being taken up together and disposed by a common order.

The petitioners were initially appointed on the post of Senior Teacher(Lecturer) and were thereafter promoted on the post of Vice Principal. Some of them were promoted when

the salary of the post of Vice Principal was paid in the pay scale of Rs.2200-4000(scale no.16) but subsequently this pay scale was revised to 8000-13500 w.e.f 1.1.1997. In order to appreciate the controversy better, the details with regard to initial appointment, and subsequent promotion and revised pay fixation of the petitioners as disclosed in the petitions are being detailed out in the following chart:-

Writ Petition Nos. & title	Initial Appointment	Date and post of promotion	Date of Order of fixation of salary and its later revision in Revised Rules of 1999.		Date,Post of promotion and pay scale	Notification dated 7/8/1998 providing for Revision of Pay Scales of various posts(in the case of the petitioner, Vice Principal)
No.4988/02 "Ram Ratan Chouhan vs. State"	Senior Teacher (Lecturer), 1971.	21/2/1997, Vice Principal, Date of joining 4/3/1997	10/7/1997, Rupess 2200-4000/- w.e.f. 4/3/1997 but later fixed in scale of 8000-13500 on 14.6.2000 w.e.f. 1.9.96 but petitioner submitted option for revision of salary w.e.f. 21.9.1997.		29/9/2000, Principal, Rs.9000-14400/-	Made effective from 1/7/1998, Pay scale No.12A was added, provides for senior scale of Rs.7500-12000/- for entry scale of Rs.6500-12000
No.4803/02 "Heer Singh vs. State"	Senior Teacher (Lecturer), 1970	16/11/1996, Vice Principal.	On 29/5/1998 in scale of Rs.8000-13500/0 w.e.f. 3/12/1996.		30/8/2000,Principal, Rs.9000-14400/-.	Made effective from 1/7/1998, Pay scale No.12A was added, provides for senior scale of Rs.7500-12000/- for entry scale of Rs.6500-12000
No.2058/02 "Bhoj Raj Vyas vs. State"	Teacher Grade II,1967.	1977, Senior Teacher (Lecturer) and on 28/10/1997, Vice Principal	On 27.11.1997, in Scale of 2200-4000/-w.e.f. 10/11/1997 but later fixed in scale of 8000-13500 w.e.f.10/11/1997		31/10/2001, Principal (on temporary basis), Rs.9000-14400/-	Made effective from 1.7.1998, Pay scale No.12A wa added, provides for scale of Rs.7500-12000/-. Entry scale of Rs.6500-12000/-

No.5001/02 “Madan Lal Modi “	Senior Teacher (Lecturer) 1971.	21/2/1997, Vice Principal.	On 29/5/1997 in scale of Rs.2200-4000/- w.e.f. 5.3.1997 but later fixed in scale of Rs.8000-13500/- w.e.f. 21.9.1997		29/9/2000, Principal, Rs.9000-14400/-	Made effective from 1.7.1998, Pay Scale No.12A was added, Provides for scale of Rs.7500-12000. Entry scale of Rs.6500-12000.
No.3432/02 “Roop Narayan Joshi vs. State”	Teacher Grade II, 1968.	20/9/1976, Senior Teacher (Lecturer).	On 14/8/1997 in scale of Rs. 2200-4000 but later fixed in the scale of Rs.8000-`3500 w.e.f.5/7/1997	.	29.9.2000, Principal, Rs.9000-14400.	Made effective from 1.7.1998, Pay scale No.12A wa added, provides for scale of Rs.7500-12000/-. Entry scale of Rs.6500-12000/-
No.4274/02”Smt. Pushpa vs. State”	Teacher Grade II, 1967.	20/9/1994, Senior Teacher (Lecturer).(A) 23.9.1995, Head Mistress. (B) 16.11.1996 Vice Principal	Fixed at Rs.9500 in scale of Rs.6500-10500 as Head Mistress but later revised by order dated 20/5/1998 at Rs.9925 in scale of Rs.8000-13500 w.e.f. 3/12/1996.		30.8.2000, Principal, Rs.9000-14400/-.	Made effective from 1.7.1998, Pay sclae nO.12A was added, provides for scale of Rs.7500-12000/-. Entry scale of Rs.6500-12000/-

The aforequoted particulars would show that some of the petitioners promoted to the post of Vice Principal were fixed in the pay scale of Rs.2200-4000 but when the aforesaid scale was revised by the Rajasthan Civil Services(Revised Pay Scale), Rules 1998(for short “the Rules of 1998”) to the scale of Rs.8000-13500, their pay was fixed in the aforesaid revised scale from various dates. In the case of some other petitioners however also this would be evident from the aforesaid chart that their pay fixation was also made in the pay scale of

Rs.8000-13500 from a date much earlier to the issuance of the notification dated 7th August, 1998 prescribing thereby the new pay scale of Rs.6500-10500 as scale no.12-A w.e.f 1.7.1998. The respondents however by their notification dated 7th August, 1998 promulgated the Rajasthan Civil Services(Revised Pay Scale)(VIth Amendment) Rules , 1998 w.e.f 1st July, 1998. In fact this notification in so far as it is relevant to the present case provided for the scale of Rs.8000-13500 as senior scale to those in the entry scale of Rs.6500-10500, which was revised to 7500-12000, upon their completion of 8 years service in the entry scale provided, they possess Post Graduation degree. In the case of those who did not possess such degree however their pay scale continued to remain 6500-10500(Scale no.15). Scale of Rs.7500-12000(Scale no.12-A) was provided as their senior scale after they had completed ten years of service and thereafter scale of Rs.8000-13500(scale no.13) was provided as selection scale after they had completed 8 years service in senior scale.

When the Revised Rules of 1998 were first notified on 7.9.1998 and were made effective on 1st September, 1998 and the pay scale of the post of Vice Principal was revised thereunder from Rs.2200-4000 to Rs.8000-13500, fresh pay fixation orders in the case of the petitioners were made in such revised pay scale no.13. Subsequent amendment namely VI th amendment brought about in the revised pay scale of 1998 vide notification dated 7th August, 1998 would have no application to the case of the petitioners whose pay fixations in scale no. 13 from Rs.8000-13500 had been made much earlier thereto as all of them were already in receipt of their salary in the said scale of Rs.8000-13500. The rules so amended however the respondents also revised the pay of the petitioners w.e.f. 1st July, 1998 and sought to recover the difference of salary between two pay scales paid to them albiet subsequent to 1st July, 1998. This is what with which the petitioners felt aggrieved and have approached this Court.

I have heard Mr. M.S. Singhvi, learned counsel for the petitioner and Mr.Rameshwar Dave,learned Dy.Government

Advocate for the State and perused the record.

Mr.M.S. Singhvi,learned counsel for the petitioners argued that the impugned order in seeking to revise that pay scale to the detriment of the petitioners would have evil and civil consequences upon them. Such orders cannot be allowed to stand in law because they seek to take away vested rights of the petitioners inasmuch as no opportunity of hearing was provided to the petitioners prior to passing of the aforesaid orders.These orders being arbitrary and unreasonable are violative of Articles 14 and 16 of the Constitution of India. According to Mr. M.S.Singhvi, the petitioners were promoted to the post of Vice Principal against the vacancies occurring much prior to 1st July, 1998 when the pay scale no.12-A(7500-12000) was prescribed for the first time.The pay of the petitioners which was already fixed in the scale of 8000-13500 much before 1st July, 1998 could not be reduced to and brought down in the pay scale of Rs.7500-12000 when the rule making authority itself has made the amended rules effective from 1st July,1998.It was argued that the pay scale no.12 was intended

to be given as senior scale to those whose entry scale was Rs.6500-10000. But in the case of those who were already in receipt of their salary in the scale of Rs.8000-13500, such a scale could not be applied and that too with retrospective effect. Mr.M.S. Singhvi has relied upon the judgment of this Court in Chandra Mohan Singh & Ors. vs. State of Rajasthan & Ors., 2004(3) WLC(Raj.) p.413 and also all those Supreme Court judgments which have been referred to therein.

Mr.M.S.Singhvi, learned counsel for the petitioners therefore argued that the amended rules in so far as it provides pay scale no.12-A which is a lower pay scale for those whose pay scale stood already revised in pay scale no. 13 which is a higher scale is liable to be struck down being arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution of India. It has been argued that action of the respondents in effecting the recovery of the difference of the amount between two pay scales is also highly unreasonable and inequitable and therefore deserves to be annulled.

On the other hand, Mr.Rameshwar Dave, learned Dy.Government Advocate appearing for the State argued that all the petitioners were holding the post of Vice Principal and the revised pay scale of 1998 have been amended by the notification w.e.f. 1st July, 1998 which has provided for a universal pay scale of Rs.7500-12000 for all those who are holding the post of Lecturer/Vice Principal. The petitioners therefore cannot be allowed to draw salary in the pay scale of 8000-13500. The impugned orders have only been passed in consequence of the amended rules.Salary to a government servant cannot be allowed contrary to what is prescribed in the existing rules. It has been argued that the rule making authority not only has the power to make rules but also to amend them retrospectively. Mr.Rameshwar Dave also argued that merely because the petitioners drew their salary in the scale of Rs.8000-13500 for certain months that does not divest the authority of its power to amend the rules and if necessary even retrospectively. This did not vest any right in them to continue to draw such salary in such pay scale. No vested right of the petitioners has been taken away because the rules have

been made effective from 1.7.1998 and the petitioners have been allowed to retain the amount which they have drawn pursuant to earlier pay scale for the period prior to 1.7.1998 and no recovery of the differential amount of salary consequent upon the revised pay fixation has been made. It has been argued that when any order is required to be passed in consequence of and in giving effect to a rule, no opportunity of hearing is required to be given. It has been argued that in matters of fixation of pay, the courts have been loath to interfere because it is basically a function of the executive. Leaned Dy.Government Advocate therefore argued that the writ petition be dismissed.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the record.

A careful analysis of the notification dated 7th August, 1998 would make it clear that amended rules have been made effective from 1st July, 1998 . In those rules the pay

scale of Rs.6500-10500 prescribed for Vice Principal has been revised to Rs.7500-12000(scale No.12-A)without special allowance as newly introduced pay scale.This would form entry scale for the Vice Principals of Secondary School who upon completion of eight years service in that scale and subject to possessing Post Graduation degree would be entitled to senior scale of Rs.8000-13500(Scale no.13). For other category of post which are somewhat lower in hierarchy such as Lecturer in music, drawing, humanities, commerce, science etc. however the pay scale of Rs.7500-12000 has been prescribed as senior scale upon their completion of service of ten years and pay scale of Rs.8000-13500 has been prescribed as selection scale on their having completed eight years of service in senior scale. This is a scheme which has been introduced at par with the similar scheme prevalent in Government of India which is known as Assured Career Promotion Scheme. This scheme is intended to remove stigmation in service where the employees without getting any promotion are made to work on the same post for number of years. This scheme in effect in so far as category of employees under the rules are concerned

substitutes the scheme of grant of selection scale on completion of 9, 18 and 27 years of service. But core of the question is that when a certain category of employees have already been fixed in a particular scale, whether the respondents by retrospectively amending the rules can take away the benefit which has been derived by them having received higher amount of salary in higher pay scale than the one which is sought to be introduced under the amended rules. Moreover, whether such a retrospective pay revision can be allowed to be made when the rule making authority itself did not intend to make the amended rules effective from a date earlier than 1st July, 1998. A somewhat similar controversy was examined by this Court in Chandra Mohan(supra) wherein also the petitioners were being paid in the pay scale of Rs.6500-10500 prior to enforcement of the revised pay rules of 1998 w.e.f. 1st September, 1996. But as an effect of implementation of such rule, they were sought to be fixed in pay scale of Rs.5500-9000 because the government by issuing notice dated 7th August, 1988 introduced the concept of entry scale and selection scale in substitution of the scheme of selection scale

on completion of 9, 18 and 27 years of service as provided for by the Notification dated 25th January, 1992. In the subsequent notification all the senior teachers who were hither to being paid in the pay scale of Rs.6500-10500 were reduced to Rs.5500-10500 w.e.f. 1st July, 1998. It was however directed that recovery of over payment as a result of the amended provision if made any, shall stand waived for the period from 1st July, 1998 till the date of issue of the notification . This Court in para 16 of the Chandra Mohan Singh(supra) has held as under :-

> "16.Undeniably the aggrieved persons are Senior Teachers who before coming into force of the 1998 rules were receiving the benefit of existing pay scales no. 14 and 15 as indicated in Schedule I(i.e. Pay scale of Rs.2000-3200 and Rs.2000-3500) and after giving effect to the revised pay scales from September, 1, 1996 the Revised Pay scale No.12 (i.e. Pay Scale of Rs.6500-10500) was given to them. After issuance of the impugned notification with retrospective effect, the secured and vested rights of the petitioners, who were already receiving the benefit of Pay scale of Rs.6500-10500 prior to July 1, 1998, have been taken away. A benefit that has accrued to the petitioners under the existing rules cannot be taken away by an amendment with retrospective effect and no statutory rule or administrative order can whittle down or destroy any right which has become crystallized and no rule

> can be framed under the Proviso to Article 309 of the Constitution which affects or impairs the vested rights. The Act of the State of Rajasthan in issuing impugned notifications retrospectively which have the effect of taking away a benefit already available to the petitioners under the existing rule is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution."

Analysis of the aforesaid view expressed by this Court in Chandra Mohan Singh(supra) case would make it appear that the very same amended rules of 1998 introduced vide same notification dated 7th August 1998 were subjected to examination by this Court, albeit in the context of the claim made by a different class of employees namely-senior teachers. In their case too, as it were, the rules were sought to be retrospectively enforced seeking to withdraw from them the benefits which had already accrued to them under the revised pay scale Rules of 1998 w.e.f. 1st September, 1996. Though, the impugned amended rules were enforced from 1st July, 1998 and therefore recovery for the period from 1st July, 1998 to the date of issue of the amended notification was waived. In the present case also, all the petitioners started receiving payment of their salary in the pay scale of Rs.8000-13500

w.e.f. different dates indicated above. This scale of Rs.8000-13500 was corresponding to the pay scale of Rs.2200-4000 in the Rules of 1998 and replaced the latter scale w.e.f. 1st September, 1996. This explains why the petitioners started getting salary in the said scale. Pay fixation of the same of the petitioners in the scale of Rs.8000-13500 was made in the year 1996 itself. Having been fixed in the pay scale of Rs. 8000-13500 and received their emoluments in such higher scale of pay, the petitioners acquired a vested right which accrued to them by virtue of enforcement of the Rules of 1998 w.e.f. 1st September, 1996. When the rules were enforced w.e.f. 1st September, 1996, the benefits flowing therefrom also became available to the petitioners from that date or any other date falling thereafter but before the impugned amendment notification. In my considered view such a vested right could not be thereafter truncketed and trampled by the respondents by impugned amendment notification purported to have been issued under proviso to Article 309 of the Constitution of India for the reasons as shall be discussed hereafter.

The question with regard to retrospective operation of the Act came up for consideration of a Constitutional Bench of the Hon'ble Supreme Court in State of Gujarat vs. Raman Lal Keshav Lal Soni, (1983) 2 S.C.C. p.33. The question posed for consideration in that Court was whether the status of ex-ministerial employees who had been allotted to the panchayat service as Secretaries, Officers and servants of Gram and Nagar Panchayats under the Gujarat Pahchayat Act, 1961 as the governments servants could be extinguished by making retrospective amendment in the Act. Striking down the amendment on the premise that it offended Articles 31 and 14 of the Constitution of India, their Lordships in para 52 of the judgment observed as under :-

> "The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no rights, therefore, the requirements

> of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history."

In another Constitutional bench judgment of the Hon'ble Supreme Court in B.S.Yadav vs. State of Haryana , 1980 Supp. SCC 524 while holding that the power exercised by the Governor under proviso to Article 309 partakes the characteristics of the legislative act and was not as executive power and it is open to him to give retrospective operation to the rules made under that provision, their Lordships held that when the retrospective effect extends over a long period, the date from which the rules are made to operate must be shown to bear, either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules.

On yet another occasion the constitutional bench of the Hon'ble Supreme Court in Chairman,Railway Board vs.

Rangadhamaiah, (1997) 6 S.C.C. p.623 had the occasion to consider the validity of retrospective amendment to the service rules adversely affecting the pension of the employees who already stood retired on the date of notification issued by way of amendment, their Lordships held the reduction of admissible pension with effect from retrospective effect to be arbitrary, unreasonable after exhaustive review of case law on the subject and held that "a rule which seeks to reverse from an anterior date, a benefit which has been granted or availed, e.g. promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively."

In P.Tulsi Das & Ors. vs. Government of A.P. & Ors., (2003)1 S.C.C. p.364 their Lordships had the following views to express on the question of retrospectivity of the Rules vis-a-vis acquired or vested rights :-

> "Such rights, benefits and perquisites acquired by the teachers concerned cannot be said to be rights acquired otherwise than in accordance with law or brushed aside and trampled at the sweet will and

pleasure of the Government, with impunity. Consequently, we are unable to agree that the legislature could have validly denied those rights acquired by the appellants retrospectively not only depriving them of such rights but also enact a provision to repay and restore the amounts paid to them to the State. The provisions of the Act, though can be valid in its operation "in futuro" cannot be held valid insofar as it purports to restore status quo ante for the past period taking away the benefits already available, accrued and acquired by them. For all the reasons stated above the reasons assigned by the majority opinion of the Tribunal could not be approved in our hands. The provisions of Sections 2 and 3(a) insofar as they purport to take away the rights from 10.2.1967 and obligate those who had them to repay or restore them back to the State are hereby struck down as arbitrary, unreasonable and expropriatory and as such are violative of Articles 14 and 16 of the Constitution of India. No exception could be taken, in our view, to the prospective exercise of powers thereunder without infringing the rights already acquired by the appellants and the category of the persons similarly situated whether approached the courts or not seeking relief individually."

In T.R.Kapur & Ors. Vs State of Haryana & Ors., 1986(supp.) S.C.C. p.584 Hon'ble Supreme Court on consideration of catena of its previous judgments on the subject held that power to frame rules to regulate the conditions of service carries with it the power to amend or alter

that the rules with a retrospective effect. It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights. Therefore, unless it is specifically provided in the rules, the Court held, the employees cannot be reverted and their promotions cannot be recalled. In other words, such rules laying down qualifications for promotion made with retrospective effect must necessarily satisfy the tests of Articles 14 and 16(1) of the Constitution.

Undoubtedly right to receive salary or emoluments

in a particular pay scale is one of the conditions of the service. Such right may flow from the statutory rules framed under proviso to Article 309 of the Constitution and even from executive instructions in a given case. When a particular government servant has been allowed to draw his salary in a particular scale of pay on the basis of his rights flowing from relevant rules, such a rule cannot be allowed to be amended with effect from an anterior date thereby withdrawing the benefits available to the government servant. It is trite proposition that vested rights and accrued rights cannot be withdrawn by amending the rules retrospectively or by enforcing the newly framed rules retrospectively. Even though, the President or the Governor, as the case may be , in exercise of his powers under proviso to Article 309 of the Constitution can make rules which may have prospective or retrospective operation, such rules are always open to challenge on the ground of violation of fundamental rights contained in part III of the Constitution of India, especially Articles 14 and 16 thereof. Rule which operates in futuro so as to govern future rights of those already in service cannot be assailed as being

violative of Articles 14 and 16 of the Constitution of India. But when a rule seeks to reverse already granted, drawn or availed benefit from an earlier date, it would be open to challenge as being violative of Articles 14 and 16 of the Constitution.

Much though the respondents have argued that the notification dated 17th August, 1998 has been made effective only from 1st July, 1998 and has not been given retrospective effect but the fact remains that it has the effect of taking away and withdrawing those benefits which the petitioners received from an anterior date and had already received when their pay fixation was made in the scale of 8000-13500.Contention of the respondents that the difference of the pay has not been recovered and it has been treated as their personal pay to be adjusted against the future increments gained by the petitioners would in fact be no solace to them because it boils down to the same result of withdrawing an already granted pay scale. Treating difference of pay between the two stages as their personal pay would result in cessation of increase in their salary in the normal course till they reach the stage of their

personal pay in the revised/reduced pay scale. This would essentially freeze their salary corresponding to the period when they reach the stage equal to the pay received by them at the time of enforcement of the impugned amended rules. Such a methodology deviced by the respondents does not in any manner save their action from being rendered arbitrary , unreasonable and violative of Articles 14 and 16 of the Constitution as the impugned amended rules nonetheless would have the retrospective effect withdrawing an already acquired and vested right.

Upshot of the aforesaid discussion is that the writ petitions are allowed and the impugned notification dated 7th August, 1998 in so far as it seeks to take away and withdraw the accrued and vested rights of the petitioners by reducing their fixation in the pay scale of 7500-12000 to that of 8000-13500 w.e.f. 1st July, 1998 is declared ultra vires to Articles 14 and 16 of the Constitution of India and is accordingly quashed and set aside. The petitioners are held entitled to receive and continue to receive their salary in the pay scale of 8000-13500. Consequential recovery orders passed in the case of

the petitioners would also stand quashed and set aside and they would be entitled to refund of the amount, if already recovered together with interest @ 6% p.a. within a period of three months from the date of service of copy of the judgment. There shall be however no order as to costs.

(MOHAMMAD RAFIQ),J.